

HOUSE BILL 3401

By Turner M

AN ACT to amend Tennessee Code Annotated, Title 4, to enact the "Public Employer-Employee Negotiation Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1.

(a) This act shall be known and may be cited as the "Public Employer-Employee Negotiation Act".

(b)

(1) It is the purpose of this act to prescribe the legitimate rights and obligations of municipalities, counties and the state and their employees to establish procedures governing relationships between them.

(2) Local governments and the state and their employees have an obligation to the public to exert their full and continuing efforts to achieve the highest possible standards of employment in the governmental entity in which they serve. This requires establishment and maintenance of a climate and working environment that will attract and retain a highly qualified staff and stimulate optimum performance by such staff.

(3) Experience has shown that governments and their employees can best reach these objectives if each utilizes the ability, experience and judgment of the other in formulating policies and making decisions that involve terms and conditions of service and other matters of mutual concern. It is the purpose and policy of this act, in order to protect the rights of individual employees in their relations with their governmental employers; and to protect the rights of the

governments and the public in connection with employer-employee disputes affecting the public service, to recognize the rights of public employees of state and local government to form, join and assist public employee organizations to meet, confer, consult, and negotiate with government employers over matters relating to terms and conditions of service and other matters of mutual concern through representatives of their own choosing, to engage in other activities for the purpose of establishing, maintaining, protecting and improving employment standards, and to establish procedures which will facilitate and encourage amicable settlements of disputes.

(4) The "terms and conditions of service" or "working conditions" of public employees are those fundamental matters that affect a public employee financially or the employee's employment relationship with the governmental entity.

(5) Notwithstanding any other provision to the contrary, nothing in subdivisions (b)(4) and (5) shall be construed to prevent a government or public employee organization from engaging the services of qualified individuals for purposes of advice and consultation during the negotiations process.

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Arbitration" means the process of determination of disputed matters by submission to private unofficial persons selected for a purpose, and in a manner consistent with this act. Arbitration under this act is governed by § 29-5-302(b);

(2) "Collective bargaining agreement" means a written contract, memorandum of understanding or agreement arrived at by the representatives of the governmental entity and a recognized public employees' organization on or

after the effective date of this act, which is subsequently presented to the governmental entity and to the membership of such organization for ratification or rejection. This act does not apply to any such collective bargaining agreement or memorandum of understanding arrived at prior to the effective date of this act, unless all parties to the collective bargaining agreement or memorandum of understanding agree to renegotiate the collective bargaining agreement or memorandum of understanding;

(3) "Governmental entity" means the state and any city or county or any political subdivision thereof, including any county having a metropolitan form of government;

(4) "Mediation" means that process by which a federal mediator, or a service as determined by the department of labor and workforce development, assists in reconciling a dispute regarding compensation, benefits, duties and other terms and conditions of employment and service between representatives of the governmental entity and the recognized public employees' organization through interpretation, recommendations and advice;

(5) "Negotiating unit" means a unit of governmental employees.

(6) "Negotiations" means that process whereby the chief executive of a governmental entity or such representatives as it may designate, and representatives of a recognized public employees' organization meet at reasonable times and confer, consult, discuss, exchange information, opinions and proposals, in a good faith endeavor to reach agreement on matters within the scope of discussions, and incorporate such agreements into a written agreement;

(7) "Negotiator" means the person selected by the governmental entity and the public employees' organization to do the negotiating;

(8) "Person" includes one (1) or more individuals, organizations, associations or their representatives;

(9) "Public employee" means any person employed by a governmental entity other than a managerial employee;

(10) "Public employees' organization" means any organization with membership open to public employees, in which such employees participate and which exists for the purpose of dealing with governmental entities concerning, but not limited to, grievances, wages, hours of employment, or other conditions of employment. Such organizations may establish rules and regulations for conducting business, including provisions for the dismissal of individuals from membership. Such organization shall be limited to a public employee's organization which only represents public employees;

(11) "Representative" includes any person, or group of persons, organization or association who is designated and authorized by the respective negotiating unit or governmental entity to negotiate and act for it under this act;

(12) "Strike" means the failure with others to report for duty, the willful absence from one's position, the stoppage of work or the abstinence in whole or part from the full, faithful and proper performance of the duties of employment, and without the lawful approval of one's superior, or in any manner interfering with the operation of the paid public department, for the purpose of inducing or coercing the recognition of any employee organization or change in the conditions or compensation or the rights, privileges or obligations of employment;

(13) "Tennessee public labor board" means the board created pursuant to Section 3 set up under the department of labor and workforce development to resolve any dispute related to which public employees organization will be the exclusive representative of public employees of a department.

SECTION 3.

(a) There is created the Tennessee public labor board, referred to as board in this act.

(b) The board shall consist of three (3) members experienced in public labor relations.

(c) One (1) member shall be chosen and appointed by the governor.

(d) One (1) member shall be chosen by the municipalities and appointed by the governor.

(e) One (1) member shall be chosen by the counties and appointed by the governor.

(f) The terms of office shall be three (3) years and terms shall be staggered so as not have a complete turn over on the board in any one (1) year.

(g) Board members shall be reimbursed by the state for expenses incurred while performing their duties in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

SECTION 4. Public employees have the right to self-organization, to form, join or be assisted by organizations, to negotiate through representatives of their own choosing, and to engage in other concerted activities for the purpose of negotiations or other mutual aid or protection; provided, that employees also have the right to refrain from any or all such activities.

SECTION 5.

The Tennessee public labor board shall establish criteria and procedures to be followed for public employees to select a bargaining representative to be the exclusive recognized representative of the public employees, the manner in which a decertification election may be held, as well as all necessary criteria requiring the bargaining representative and the governmental entity to negotiate in good faith on the conditions of employment identified in Section 7.

SECTION 6.

(a) It is a violation of this act for a governmental entity or its designated representative to:

(1) Impose or threaten to impose reprisals on employees, or discriminate against employees by reason of their exercise of rights guaranteed by this act;

(2) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in this act;

(3) Refuse or fail to negotiate in good faith or execute a collective bargaining agreement incorporating any agreements reached with representatives of a recognized public employees' organization as provided in this act;

(4) Refuse to permit a public employees' organization to have access at reasonable times to areas in which public employees work, use institutional bulletin boards, mailboxes, or other communication media, or use institutional facilities at reasonable times for the purpose of holding a meeting concerned with the exercise of the rights guaranteed by this act; provided, that if a representative has been selected or designated pursuant to this act, a governmental entity may deny such access or usage to any public employees' organization other than the

representative until such time as a lawful challenge to the majority status of the representative is sustained pursuant to this act;

(5) Encourage or discourage membership in any organization by discrimination in hiring, or other terms or conditions of employment; provided, that the governmental entity or its designated representative may express any views, arguments or opinions on the subject of employer-employee relations provided that such expression contains no threat of reprimand, discharge, or promise of benefits;

(6) Discharge or discriminate against an employee because the employee has filed an affidavit, petition or complaint, or given any information or testimony under this act;

(7) Dominate, interfere or assist in the administration of any public employees' organization;

(8) Refuse to in good faith mediate, arbitrate or participate in fact-finding efforts pursuant to this act; or

(9) Urge, coerce or encourage others to engage in any actions which are violations of this.

(b) It is a violation of this act for a recognized public employees' organization or its representatives to:

(1) Cause or attempt to cause a governmental entity to engage in conduct in violation of the provisions of this act; provided, that this subdivision (b)(1) shall not be construed to impair the right of a public employees' organization to prescribe its own rules with respect to operation involving the acquisition or retention of membership;

(2) Refuse or fail to negotiate in good faith with the governmental entity, or execute a written contract incorporating any agreements reached;

(3) Interfere with, restrain or coerce public employees or a governmental entity in the exercise of rights granted in this act;

(4) Refuse to in good faith mediate, arbitrate or participate in fact-finding efforts pursuant to this act;

(5) Engage in a strike; or

(6) Urge, coerce or encourage others to engage in unlawful acts as defined in this act.

(c) A complaint of a violation of this act shall be filed with the board.

SECTION 7.

(a) The governmental entity and the recognized public employees' organization shall negotiate in good faith the following conditions of employment:

(1) Salaries or wages;

(2) Grievance procedures;

(3) Insurance;

(4) Pensions and fringe benefits;

(5) Working conditions;

(6) Leave;

(7) Payroll deductions; provided that payroll deductions established pursuant to § 7-51-204 for payment of dues shall not be considered a condition of employment for purposes of this subdivision (a)(7);

(8) Health and general welfare; and

(9) Other conditions of employment.

(b) Nothing shall prohibit the parties from agreeing to discuss other terms and conditions of employment in service. Either party may file a complaint in a court of record on any demands to meet on other terms and conditions and have an order of the court requiring the other party to continue to meet in good faith on the required items of this section only. Any negotiations under this act shall be meetings within the provisions of title 8, chapter 44, part 2.

SECTION 8.

(a) The scope of a collective bargaining agreement shall extend to all matters negotiated between the governmental entity and the public employees' organization, provided, that the scope of such agreement shall not include proposals contrary to:

- (1) Federal or state law;
- (2) Public employee rights defined in this act; or
- (3) Municipal rights contained in title 6 or title 7.

(b) When agreement is reached by the representative of the governmental entity and the recognized public employees' organization, they shall jointly prepare a collective bargaining agreement, and, up to ten (10) calendar days, present it to their appropriate governing authorities for ratification or rejection. These governing authorities, as soon as practical, shall consider the collective bargaining agreement and take appropriate action. If either governing authority rejects or modifies any part of a proposed collective bargaining agreement, the matter shall be returned to the parties for further negotiation.

(c) A governmental entity and a recognized public employees' organization that enter into an agreement covering terms and conditions of service or other matters of mutual concern shall include in such agreement procedures for final and binding arbitration of such disputes as may arise involving the interpretation, application or violation of such agreement.

SECTION 9.

(a) Following reasonable efforts to reach a collective bargaining agreement, either the governmental entity or the recognized public employees' organization shall, upon written notification to the other, request the services of a mediation and conciliation service as determined by the department of labor and workforce development. If such service is not available at a time agreeable to the requesting party, then the party can request arbitration.

(b) If the mediator is unable to bring the parties to agreement, either party may, by written notification to the other, request that their differences be submitted to binding arbitration. Either party may request the American Arbitration Association or the Federal Mediation and Conciliation Service, or other service as determined by the department of labor and workforce development, to submit a list of at least seven (7) arbitrators to be agreed upon by both parties. Any items negotiated by a governmental entity and the recognized public employees' organization that require funding shall not be considered binding until such time as the body empowered to appropriate the funds has approved such appropriation. In the event the amount of funds appropriated is less than the amount negotiated, the governmental entity or its representatives and the recognized public employees' organization or its representatives shall renegotiate an agreement within the amount of funds appropriated.

(c) The arbitrator shall meet with the parties or their representatives, or both, either jointly or separately, make inquiries and investigations, hold hearings, and shall take such other steps as the arbitrator deems appropriate. For the purpose of such hearings, investigations and inquiries, the arbitrator shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The several departments, commissions, divisions, authorities, boards,

bureaus, agencies and officers of the governmental entity or any political subdivision or agency thereof, shall furnish the arbitrator, upon the arbitrator's request, all records, papers and information in their possession relating to any matter under investigation by or in issue before the arbitrator. Arbitration will be based on a "last best offer" system, with the arbitrator choosing one (1) of the last best offers made by the parties. If the dispute is not settled prior thereto, the arbitrator shall make findings of fact and the arbitrator's award shall be binding on both parties and shall be made within thirty (30) calendar days after the conclusion of the hearing. Any finding of fact or terms of settlement shall be submitted in writing to the parties. The costs for the services of the arbitrator shall be borne by the party who loses.

SECTION 10.

(a) Nothing in this act shall be construed to violate title 50, chapter 1, part 2 or any other right to work laws of this state only to the extent of such conflict.

(b) Nothing in this act shall be constructed to violate federal law.

SECTION 11. Tennessee Code Annotated, Section 4-29-233, is amended by adding the following language as a new, appropriately designated subdivision:

() Tennessee public labor board created by Section 3 of this act;

SECTION 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 13. This act shall take effect upon becoming law, the public welfare requiring it.